

INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM
COMPLETION GUARANTY
Borrower's D-U-N-S # _____

THIS COMPLETION GUARANTY (the "Guaranty") is dated as of _____, 20__, by [GUARANTOR] ("Guarantor") for the benefit of **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana ("IHCDA"), as administrator of the American Recovery and Reinvestment Act of 2009 (the "ARRA") Section 1602 Tax Credit Exchange Program.

RECITALS:

WHEREAS, IHCDA has agreed to make a loan of Section 1602 Program funds in the aggregate principal amount of _____ and **___/100 Dollars (\$_____.)** (the "Loan") to [Borrower] ("Borrower"), pursuant to that certain loan agreement dated _____, 20__ and payable to the order of IHCDA (together with all renewals, modifications, increases and extensions thereof, the "Loan Agreement"), which is secured by the liens and security interests of a Mortgage dated _____, 20__ (the "Mortgage") from Borrower to IHCDA encumbering the real property, improvements and personalty described therein (the "Property"), and further evidenced, secured or governed by the other Loan Documents.

WHEREAS, as a condition to making the Loan, IHCDA has required the execution and delivery of this Guaranty by Guarantor.

WHEREAS, Guarantor [is the developer of the Property, a sponsor of the development of the property, or the owner of a direct or indirect interest in Borrower and, having a financial interest in the Property], has agreed to execute and deliver this Guaranty to IHCDA.

NOW THEREFORE, in order to induce IHCDA to advance the Loan funds to Borrower, and in consideration of IHCDA's agreement to do so, the Guarantor hereby agrees as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

2. Performance Guaranty. Guarantor hereby unconditionally and irrevocably guarantees unto IHCDA the timely completion by Borrower of the construction or rehabilitation of the Project in accordance with the Plans, in a good and workmanlike manner, free and clear of all mechanics', materialmens' or similar liens, the satisfaction of all financial and other obligations of the Borrower through Stabilization (each an "Obligation" and collectively, the "Obligations").

In the event that Borrower fails to timely complete the Obligations within **[thirty (30) days]** after delivery of notice of a default with respect to the Obligations, Guarantor shall, upon IHCDA's request, fully and timely perform, or cause to be performed, any Obligation of Borrower which for any reason whatsoever was not performed by Borrower as and when required of Borrower under the Loan Agreement. After IHCDA's request for performance hereunder, Guarantor shall be entitled to requisition and draw the remaining Loan funds for the purpose of completing the Project, provided that: (a) Guarantor shall then be performing the Obligations or causing performance of the same, either with the written and unrevoked consent of Borrower or with formal judicial authorization of such performance; (b) all such disbursements shall be secured by the collateral for the Loan with the same priority as all

previous disbursements to Borrower; and (c) Guarantor shall otherwise comply with the provisions of the Loan Agreement governing requisitions and disbursements of Loan funds (except that no such disbursement requested by Guarantor shall be withheld solely by reason of any uncured default by Borrower that is impossible for Guarantor to cure even if Guarantor obtains possession of the Project).

If Guarantor shall fail to perform or cause the performance of any of the Obligations upon IHCDAs request as and when required under this Guaranty, then: (i) IHCDAs shall have the right (but not the obligation) in its sole discretion to complete the Project itself or through its agents or third parties as provided in the Loan Agreement; and (ii) Guarantor shall promptly pay to IHCDAs on demand a sum equal to the costs of performing the Obligations by others acceptable to IHCDAs in excess of the undisbursed Loan funds or other available funding sources remaining at the time of IHCDAs request for performance hereunder (regardless of whether the actual cost of completion in accordance with the Plans exceeds the amount originally budgeted therefor, and regardless of whether such excess results from delays or start-up costs or contractor settlements or other costs or inefficiencies inherent in obtaining such performance from persons whom Borrower may have failed to pay or who may then be unfamiliar with the Plans or the Project). All such payment obligations of Guarantor shall be promptly paid by Guarantor in lawful currency of the United States of America and in immediately available funds. All such payments shall be made without set-off, deduction or withholding for any reason whatsoever and shall be final and free from any claim or counterclaim of the Guarantor.

3. Representations and Warranties. The following shall constitute representations and warranties of Guarantor and Guarantor hereby acknowledges that IHCDAs intends to make the Loan in reliance thereon:

(a) Guarantor is not in default and no event has occurred that with the passage of time and/or the giving of notice will constitute a default under any agreement to which Guarantor is a party, the effect of which will impair performance by Guarantor of his, her or its obligations under this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will violate any applicable law, rule, regulation, judgment, decree or order, or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Guarantor is a party or to which Guarantor or the property of Guarantor may be subject.

(b) There is not any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to Guarantors knowledge, threatened that could adversely affect performance by Guarantor of his, her or its obligations under this Guaranty.

(c) Neither this Guaranty nor any statement or certification as to facts previously furnished or required herein to be furnished to IHCDAs by Guarantor, contains any material inaccuracy or untruth in any representation, covenant or warranty or omits to state a fact material to this Guaranty.

4. Continuing Guaranty. Guarantor agrees that performance of the Obligations by Guarantor shall be a primary obligation, shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that Guarantor may have against IHCDAs, Borrower, any other guarantor of the Obligations or any other person or entity, and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including without limitation:

- (a) any lack of validity or enforceability of any of the Loan Documents;
- (b) any termination, amendment, modification or other change in any of the Loan Documents;
- (c) any failure, omission or delay on the part of Borrower, Guarantor, any other guarantor of the Obligations or IHCD to conform or comply with any term of any of the Loan Documents or any failure of IHCD to give notice to Guarantor of any Event of Default;
- (d) any waiver, compromise, release, settlement or extension of time of payment or performance or observance of any of the obligations or agreements contained in any of the Loan Documents;
- (e) any action or inaction by IHCD under or in respect of any of the Loan Documents, any failure, lack of diligence, omission or delay on the part of IHCD to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred on it in any of the Loan Documents, or any other action or inaction on the part of IHCD;
- (f) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Borrower or Guarantor, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;
- (g) any release or discharge by operation of law of Borrower, Guarantor or any other guarantor of the Obligations from any obligation or agreement contained in any of the Loan Documents or any other documents; or
- (h) any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit recourse against Borrower or Guarantor to the fullest extent permitted by law.

5. Waivers. Guarantor expressly and unconditionally waives (a) notice of any of the matters referred to in Section 4 above, (b) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of nonpayment under any of the Loan Documents and notice of any Event of Default or any failure on the part of Borrower, Guarantor or any other guarantor of Borrower's obligations to perform or comply with any covenant, agreement, term or condition of any of the Loan Documents or any other party's obligations to perform the Obligations, (c) any right to the enforcement, assertion or exercise against Borrower, Guarantor or any other guarantor of Borrower's obligations of any right or remedy conferred under any of the Loan Documents, or any other party's obligations to perform the Obligations, (d) any requirement of diligence on the part of any person or entity, (e) any requirement to exhaust any remedies or to mitigate the damages resulting from any default under any of the Loan

Documents, and (f) any notice of any sale, transfer or other disposition of any right, title or interest of IHCD A under any of the Loan Documents.

6. Subordination. Guarantor agrees that any and all present and future debts and obligations of Borrower or any affiliate thereof to Guarantor hereby are subordinated to the claims of IHCD A and hereby are assigned by Guarantor to IHCD A as security for Guarantor's obligations under this Guaranty.

7. Subrogation Waiver. Until the Obligations are paid and performed in full and all periods under applicable bankruptcy law for the contest of any payment by Guarantor or Borrower as a preferential or fraudulent payment have expired, Guarantor knowingly, and with advice of counsel, waives, relinquishes, releases and abandons all rights and claims to indemnification, contribution, reimbursement, subrogation and payment which Guarantor may now or hereafter have by and from Borrower or any affiliate thereof and the successors and assigns of Borrower or any affiliate thereof, for any payments made by Guarantor to IHCD A.

8. Reinstatement. The obligations of Guarantor pursuant to this Guaranty shall continue to be effective or automatically be reinstated, as the case may be, if at any time payment of any of Guarantor's obligations under this Guaranty is rescinded or otherwise must be restored or returned by IHCD A upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Guarantor or Borrower or otherwise, all as though such payment had not been made.

9. Financial Statements. Guarantor represents and warrants to IHCD A that (a) the financial statements of Guarantor previously submitted to IHCD A are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty and (b) no material adverse change has occurred in the financial statements from the dates thereof until the date hereof. Guarantor shall furnish to IHCD A a letter within sixty (60) days of the end of each calendar year stating there has been no material adverse change in such Guarantor's financial condition during the past calendar year, or in the event there has been a material adverse change in such Guarantor's financial condition, a description and an explanation of such material adverse change in financial condition.

10. Transfers, Sales, Etc. Guarantor shall not sell, lease, transfer, convey or assign any of its assets, unless (a) if Guarantor is an individual, such sale, lease, transfer, conveyance or assignment will not have a material adverse effect on the financial condition of Guarantor or its ability to perform its obligations hereunder, (b) if Guarantor is a corporation, partnership or other entity, such sale, lease, transfer, conveyance or assignment is performed in the ordinary course of its business consistent with past practices, and will not have a material adverse effect on the business or financial condition of Guarantor or its ability to perform its obligations hereunder. In addition, a Guarantor which is an entity shall neither become a party to any merger or consolidation, nor, except in the ordinary course of its business consistent with past practices, acquire all or substantially all of the assets of, a controlling interest in the stock of, or a partnership or joint venture interest in, any other entity.

11. Enforcement Costs. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent IHCD A in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent IHCD A in any other proceedings whatsoever in connection with this Guaranty,

then Guarantor shall pay to IHCD A upon demand all fees, costs and expenses incurred by IHCD A in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees in addition to all other amounts due hereunder.

12. Successors and Assigns; Joint and Several Liability. This Guaranty shall inure to the benefit of IHCD A and its successors and assigns. This Guaranty shall be binding on Guarantor and the heirs, legatees, successors and assigns of Guarantor. If this Guaranty is executed by more than one person, it shall be the joint and several undertaking of each of the undersigned. Regardless of whether this Guaranty is executed by more than one person, it is agreed that the undersigned's liability hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to Borrower's obligations or any part thereof and that Guarantor's liability hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations.

13. No Waiver of Rights. No delay or failure on the part of IHCD A to exercise any right, power or privilege under this Guaranty or any of the other Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in the same, similar or other circumstance.

14. Modification. The terms of this Guaranty may be waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver or other change of any of the terms of this Guaranty shall be effective without the prior written consent of IHCD A.

15. Joinder. Any action to enforce this Guaranty may be brought against Guarantor without any reimbursement or joinder of Borrower or any other guarantor of Borrower's Obligations in such action.

16. Severability. If any provision of this Guaranty is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Guarantor and IHCD A shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Guaranty and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

17. Applicable Law. This Guaranty is governed as to validity, interpretation, effect and in all other respects by laws and decisions of the State of Indiana.

18. Notice. All notices pursuant to this Guaranty shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified United States mail, addressed to:

Guarantor: _____

IHCDA: Indiana Housing and Community Development Authority
30 S. Meridian Street, Suite 1000
Indianapolis, IN 46204
Attention: General Counsel

or at such other place as either party may, by notice in writing, designate as a place for service of notice. earlier of the third federal banking day following the day sent or when actually received.

19. CONSENT TO JURISDICTION. TO INDUCE IHCDA TO ACCEPT THIS GUARANTY, GUARANTOR IRREVOCABLY AGREES THAT, SUBJECT TO IHCDA'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS GUARANTY WILL BE LITIGATED IN COURTS HAVING SITUS IN THE STATE OF INDIANA. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN INDIANA, WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO GUARANTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

20. WAIVER OF JURY TRIAL. GUARANTOR AND IHCDA (BY ITS ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST IHCDA ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(Remainder of page intentionally left blank.)

NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury that he/she Guarantor, or is the properly authorized representative, agent, member or officer of Guarantor, and that he/she has not, nor has any other member, employee, representative, agent or officer of Guarantor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, Guarantor, through its duly authorized representative, entered into this Agreement. Guarantor, having read and understood the foregoing terms of this Agreement, does by its signature dated below hereby agree to the terms thereof.

GUARANTOR:

Date: _____

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